



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0047]

Hours of Service of Drivers: Application for Exemption; David Muresan

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that David Muresan has applied for an exemption from the Agency's hours of service (HOS) rules. Mr. Muresan is a long-haul truck driver who teams with a second driver in operating a sleeper berth-equipped vehicle. Mr. Muresan believes that the Agency's HOS rules do not properly consider the unique nature of team operations. Mr. Muresan proposes that he and his co-driver be permitted to operate under HOS rules that he has designed. He believes that his commercial motor vehicle (CMV) operations under the substitute HOS rules are likely to achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2013-0047 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the online instructions for submitting comments.
- Fax: 1-202-493-2251.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, DOT Hq Building, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, between 9:00 a.m. and 5:00 p.m. e.t., Monday through Friday except Federal holidays.
- Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation section below. Note that all comments received will be posted without change to www.regulations.gov, including any personal information provided. Please see the Privacy Act section below.
- Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov at any time and in the box labeled “SEARCH for” enter FMCSA-2013-0047 and click on the tab labeled “SEARCH.”
- Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's online privacy policy at www.dot.gov/privacy or the complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316).

- Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines by clicking on the word “Help” at the top of the Portal home page. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards. Telephone: 202-366-4325. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31315 and 31136(e) to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency is required to publish a notice of each exemption request in the **Federal Register** [49 CFR 381.315(a)]. FMCSA must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

FMCSA reviews safety analyses and public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** with the reasons for denying or granting the application, and if granted, the

name of the person or class of persons receiving the exemption, and the regulatory provisions from which the exemption is granted [49 CFR 381.315(b) and (c)]. The notice must specify the effective period of the exemption, and its terms or conditions. The exemption may be renewed [49 CFR 381.300(b)].

Hours of Service (HOS) Rules

Part 395 of title 49 of the Code of Federal Regulations, “Hours of Service of Drivers,” prescribes various HOS limits. Mr. Muresan is asking for exemption from the HOS rules governing property-carrying CMVs. One of the primary HOS rules is the “14-hour rule” found at 49 CFR 395.3(a)(2).

In response to new research on fatigue, FMCSA in 2003 lengthened from 8 hours to 10 hours the minimum off-duty period between shifts required for drivers of property-carrying CMVs (68 FR 22456; April 28, 2003). However, drivers of property-carrying CMVs equipped with a sleeper berth have the option of obtaining “the equivalent of 10 consecutive hours off duty,” defined as follows: 49 CFR Once the maximum of 60 (or 70) hours of on-duty time is reached in any period of 7 (or 8) consecutive days, the driver can reset this “on-duty clock” to zero by obtaining a period of at least 34-consecutive hours off duty that includes two periods from 1:00 a.m. to 5:00 a.m. home terminal time. A driver at the maximum of 60 hours in 7 days (or 70 hours in 8 days) can also go off duty until the passage of time reduces the number of on-duty hours he or she has accumulated in the most recent 7 (or 8) days.

Section 392.3 of the FMCSRs provides the following:

Application for Exemption

Mr. Muresan and another driver operate as a team on “long-haul” operations. Team drivers typically operate a property-carrying CMV equipped with a sleeper berth, and alternate between driving the vehicle and occupying the sleeper berth. Compared to a solo driver, a team can substantially reduce the time required to complete a long trip.

A copy of Mr. Muresan’s application for exemption is in Docket FMCSA-2013-0047. He asks to be exempt, along with his co-driver, from the HOS rules of part 395, including section 395.2, “Definitions.” That section defines numerous terms, such as “on duty,” which are critical to effective compliance with and enforcement of the HOS rules. Mr. Muresan employs terms in his exemption application that he does not define (and which the HOS rules do not employ), including “rest” and “sleep.”

Mr. Muresan believes that the Agency’s HOS rules do not properly consider the unique nature of team operations. Mr. Muresan proposes that he be permitted to operate under HOS rules that he has designed. He believes that his HOS rules would better accommodate team operations without compromising safety. For instance, under his proposal, he would be exempt from the 14-hour rule without limitation, so that it would be legal for him to drive a CMV at any time without regard to the 14-hour window. Mr. Muresan states that CMV operations under his proposed HOS rules would be likely to achieve a level of safety equivalent to or greater than the level of safety as would be obtained in the absence of the exemption.

Mr. Muresan proposes “Exemption Rules” and promises to observe them. Under the exemption, he (and his co-driver, if operating as a team) would limit his driving time to 11 hours in a 24-hour period. If the exemption is granted, he would “... drive between 3 to 11 hours followed by 2 to 10 hours of rest/sleep” and would be required to

“... sleep at least 8 hours during 24 hours of service.” Mr. Muresan also proposes the following:

“... the driver who is at rest/sleep has full authority to accept or not to drive again and has authority to decide if he is restored enough to drive again. The driver on duty cannot force the driver at rest/sleep to drive again if he/she does not want.”

Mr. Muresan explains that the periods of 2 to 10 hours of rest/sleep “allow a driver to go to sleep when [he or she] is tired.” He also explains that the authority granted the driver who is “resting/sleeping” to decide when to drive again:

“... [a]llows the driver to drive again when [he or she] is restored and not hours after that. I mention that a driver cannot sleep 10 hours and after 6 hours is awaked and may soon become bored and will be sleepy about when will be the time to drive again.”

Mr. Muresan also requests that the exemption permit him to employ paper records of duty status (RODS), or logs, even if his employer has equipped the CMV with the capability to record the RODS electronically.

Mr. Muresan requests that the exemption cover a two-year period, the maximum period of time for which FMCSA can grant an exemption. Applicants may apply for renewal of their exemption every two years.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Mr. Muresan’s application for an exemption from the HOS requirements of 49 CFR part 395. The Agency will consider all comments received by the close of

business on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE
FEDERAL REGISTER]**. Comments will be available for examination in the docket as explained in the “ADDRESSES” section of this notice under the heading “Docket.” The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: December 09, 2013.

Larry W. Minor,
Associate Administrator for Policy.

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